

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company  
on an Expedited Basis for Exemption under  
Section 853 for Easements on PG&E Land  
Allowing Delta Energy Center, LLC to Maintain  
an Electric Transition Structure for the Delta  
Project and CPN Pipeline to Maintain Gas  
Facilities for the Delta Project and the Los  
Medanos Energy Center Project, or in the  
Alternative for Approval of Easements under  
Section 851. (U 39 M)

Application 01-07-031  
(Filed July 26, 2001)

**INTERIM OPINION ON CATEGORIZATION****Summary**

This decision grants the request of Pacific Gas and Electric Company (PG&E) to recategorize this proceeding from ratesetting to adjudicatory.

**Background and Discussion**

PG&E has appealed the Commission's categorization of this proceeding as ratesetting. According to PG&E, Decision (D.) 01-08-069 has transformed this formerly ratesetting proceeding into an adjudicatory proceeding, and the Commission should now recategorize it accordingly.<sup>1</sup>

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<sup>1</sup> PG&E also argues that if its Application for Rehearing of D.01-08-069 is granted, this proceeding should be recategorized as quasi-legislative.

PG&E filed an application on July 26, 2001, under California Pub. Util. Code § 851, seeking authorization from the Commission to grant two easements to Delta Energy, LLC for the purpose of constructing on PG&E property an underground-to-overhead transition structure for electric transmission lines and a segment of gas pipeline and valves. The Commission categorized this proceeding as ratesetting on August 2, 2001. (Resolution ALJ 176-3068.) On August 23, 2001, the Commission approved the requested easements in D.01-08-069, but also required PG&E to show cause why it should not be subject to sanctions for violations of Pub. Util. Code § 851, General Order 69-C, Rule 1, and specific Commission decisions.

PG&E contends that this latter provision requires that this proceeding be categorized as adjudicatory. PG&E relies heavily upon D.01-05-061 as authority. We agree that D.01-05-061 is largely on point, although we would note that D.01-05-061 properly categorized the proceeding at issue as ratesetting, denying a request by PG&E and other parties to recategorize it as adjudicatory. The present case is factually distinguishable from D.01-05-061. In that proceeding, we noted the difference between investigatory and adjudicatory phases of a proceeding, and indicated that the proceeding need not be recategorized until the end of the investigatory phase and the beginning of the adjudicatory phase.

Here, the distinction between the phases is somewhat less clear. On the one hand, the Commission is still engaged in investigative activity. We have ordered PG&E to provide additional documentary evidence relating to the underlying transaction, which is now due to be produced on September 20, 2001,

the same date this order will be before the Commission.<sup>2</sup> The Commission has not yet had an opportunity to analyze the additional information, nor has it identified what information and documents are to be included in the record. Nevertheless, the language cited by PG&E from D.01-08-069 does show that we have moved beyond the more preliminary stage of investigation, and are actively considering imposing sanctions against PG&E.

In addition, D.01-05-061 found that the ratesetting categorization was proper because the case involved a mix of fact-finding and policy making. (*See, e.g., Id.*, mimeo. p. 6.) Given the status of the underlying application here, which was granted, and the almost purely fact-finding nature of the remainder of this proceeding, that same mix is not present here. We are not considering changes to our rules or decisions, and we are not making policy in this proceeding.<sup>3</sup>

Pursuant to Rule 6.1(b) of the Commission's Rules of Practice and Procedure, the Commission may determine which category appears most suitable to the proceeding. Additionally, Rule 6.1(d) authorizes the Commission in exercising its discretion under subsection (b) to make such other procedural orders as best to enable the Commission to achieve a full, timely, and effective resolution of the substantive issues presented in the proceeding. While arguments could be made for either keeping this proceeding as ratemaking for a while longer, or recategorizing it now as adjudicatory, we find that

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<sup>2</sup> The documents were originally ordered to be produced on September 6, 2001, but PG&E requested, and was granted, a two-week extension.

<sup>3</sup> PG&E has indicated that it intends to file an application for rehearing of D.01-08-069 on the grounds that the Decision creates new policy regarding the interpretation of General Order 69-C.

recategorization as adjudicatory appears to be most suitable, based upon the facts of this proceeding.

We note the following language in D.01-05-061:

At the end of the investigation, if we determine that one or more of the Respondents likely have violated the conditions imposed by our holding company decisions or other law, we will specify, in detail, the nature of those alleged violations, and the evidence supporting those charges. At that point, if we decide to proceed to determine finally whether such violations occurred, and whether Respondents should be held liable for such violations, we will recategorize the proceedings as adjudicatory—thus imposing an ex parte ban and affording Respondents the right to cross-examine witnesses – and proceed to make those determinations. (*Id.*, mimeo. pp.7-8.)

Given that the Commission has not yet had the opportunity to examine all of the evidence to be considered in this proceeding, a more detailed specification of the nature of any violations combined with an identification of the evidence supporting such charges cannot be done simultaneously with this recategorization. We note that D.01-08-069 provides notice to PG&E of the nature of the violations it may be charged with, but the evidence supporting those charges is subject to change. Accordingly, a more detailed specification of charges, including the evidence supporting those charges, will be made as soon as practicable, and in a manner that provides PG&E adequate notice and opportunity to be heard.

### **Findings of Fact**

1. The issues addressed in the Application, specifically the granting of easements to Delta Energy, have been resolved.
2. This proceeding involves an inquiry into issues of fact.
3. The Commission is considering imposing sanctions on PG&E.

**Conclusions of Law**

1. This Commission has discretion pursuant to Rule 6.1 of its Rules of Practice and Procedure to categorize this proceeding in the manner most suitable to the circumstances of this proceeding
2. This proceeding could legitimately remain ratesetting, or could be recategorized as adjudicatory.

**INTERIM ORDER**

**IT IS ORDERED** that:

1. This proceeding, preliminarily categorized as ratesetting, is recategorized as adjudicatory.
2. Ex parte communications are prohibited.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.